

December 14, 2004



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in ET Docket No. 04-151.

Dear Ms. Dortch:

On December 21, 2004, Harold Feld of Media Access Project, Ben Scott of Free Press and Jim Snider of New America Foundation (collectively, NAF, et al.) met with Marty Liebman, Nese Guendelsberger, David Furth, and Blaise Scinto of the Wireless Telecommunications Bureau.

NAF, et al. reiterated their concerns from their filing in this docket regarding identity beacons in low power devices and requirement for professional certification. Conversation primarily focused on high power devices. Notably, would DFS provide adequate protection for high power devices? Would spectrum become so crowded that relatively few users could operate for reasonable periods of time, even with DFS? What enforcement remedies would the Commission have if DFS were not sufficient?

NAF, et al. stated that while DFS has never before been used in unlicensed devices at such high power, DFS represents a well-known technology that has been used successfully in both licensed and unlicensed services. Furthermore, the Commission has the following powers if it believes that the band has become over populated: The Commission can order manufacturers to cease manufacturing devices; it can order retailers to stop selling devices; it can order recall of devices already in the marketplace. Furthermore, the Commission has already proposed identification beacons in high-power devices, which will facilitate voluntary coordination.

NAF, et al. also discussed other possibilities for mitigation interference for high-power devices. These include: 1) limiting high power devices to rural areas, where there will be fewer users and greater likelihood of voluntary coordination among local users; 2) adopting a site-licensing scheme; 3) voluntary frequency coordinators; 4) mandatory frequency coordinators. NAF, et al. Agreed that all these alternatives are preferable to exclusive geographic based licensing, but urged that voluntary and technological mitigation strategies should be preferred to mandatory schemes or regimes that rely on exclusivity. Mandatory and exclusive regimes drive up cost and may create barriers to new entrants and potential innovators.

In response to questions on the value of unlicensed versus licensed in providing service to underserved communities, NAF, et al. attach a recent report from the consulting firm Civitium LLC entitled "Wireless Broadband – the Silver Bullet for Poverty." This study demonstrates the power of unlicensed spectrum access to provide critical services for underserved communities. When asked if there would be sufficient investment without the certainty of interference protection, NAF, et al. observed that companies have already invested billions of dollars in unlicensed technologies with new start ups and investments emerging every day. Thousands of commercial WISPs, as well as an unknown number of community wireless networks and municipal networks, have invested significant capital and infrastructure in unlicensed despite the lack of interference protection. It would irrational in the extreme to believe that this stream of investment will somehow *stop* because

the FCC has expanded the spectrum and power available to unlicensed access. NAF, *et al.* also observe that while several manufacturers, such as Intel and Motorola, favored licensing high power services, other manufacturers, such as Alvarion and Tropos, filed comments supporting unlicensed access at high power. In addition, open source non-profit projects such as the Champaign Urbana Wireless Internet Network continue to do research and development on a variety of technologies, making these results available to anyone interested in deploying. Absent adopting the NPRM, it is impossible to provide better proof of the interest of multiple parties in investing in high-power unlicensed access.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Associate Director

cc: Marty Liebman
Nese Guendelsberger
David Furth
Blaise Scinto